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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,793	07/28/2003	Robert Metzger	5490-000332	5217

7590 05/18/2007
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EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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05/18/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

11

Office Action Summary	Application No. 10/628,793	Applicant(s) METZGER, ROBERT	
	Examiner Anu Ramana	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-22 and 27-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-22 is/are allowed.
- 6) ☒ Claim(s) 27-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-29, 41-42, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Ferrante et al. (US 5,709,689).

Ferrante et al. disclose a method of reaming a distal femur by forming a first resected portion by resecting a selected condyle of a femur and resecting a second portion using the first resected portion (Figs. 6-9, col. 4, lines 33-67, col. 5, lines 1-28, col. 6, lines 40-67 and col. 7, lines 1-59).

Regarding claim 41, Ferrante et al. clearly disclose a resected first portion 17, positioning a saw guide 11 relative to the reamed section and guiding a saw blade 45 with the positioned saw guide to resect a second portion of the bone portion relative to the reamed section (Figs. 6-8).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 31-40 and 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferrante et al. (US 5,709,689) in view of Saenger et al. (US 6,468,280).

Ferrante et al. disclose all elements of the claimed invention except for: (1) forming a bore in a selected bone portion prior to guiding a drill bit; (2) disposing a spigot in the bore; and (3) guiding a reamer with the spigot using a reaming guide to form a first resected portion.

Saenger et al. teaches an instrument that is used to resect a distal end of a femur including a spigot 14 that is used to determine a resection depth (Fig. 1, col. 2, lines 34-67, cols. 3-4 and col. 5, lines 1-8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided an instrument as taught by Saenger et al. to form the initial resected surface 27 as disclosed by Ferrante et al., in order to seat the guide 11 to form the subsequent resected surfaces.

The method steps of claims 31-40 and 43-44 are rendered obvious by the above discussion.

Response to Arguments

Applicant's arguments submitted under "REMARKS" in the response filed on February 15, 2007 have been fully considered.

Applicant's arguments with respect to Ferrante et al. are not persuasive because Ferrante et al. clearly disclose a method of reaming a bone portion (i.e., distal end of a femur) wherein a second amount is generally or substantially equivalent to a first amount (see Fig. 4).

Allowable Subject Matter

Claims 18-22 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

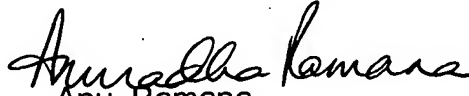
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR
May 14, 2007



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER



Anu Ramana
Patent Examiner
Art Unit 3733